

109TH CONGRESS
1ST SESSION

H. R. 1528

To amend the Controlled Substances Act to protect vulnerable persons from drug trafficking, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 6, 2005

Mr. SENSENBRENNER introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Controlled Substances Act to protect vulnerable persons from drug trafficking, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Defending America’s
5 Most Vulnerable: Safe Access to Drug Treatment and
6 Child Protection Act of 2005”.

1 **SEC. 2. PROTECTING CHILDREN FROM DRUG TRAF-**
2 **FICKERS.**

3 (a) DISTRIBUTION TO PERSONS UNDER 21 YEARS
4 OF AGE; FIRST OFFENSE.—Section 418(a) of the Con-
5 trolled Substances Act (21 U.S.C. 859(a)) is amended—

6 (1) by inserting “or section 406” after
7 “401(a)(1)”;

8 (2) by inserting “, or attempting or conspiring
9 to do so,” after “twenty-one years of age”;

10 (3) by striking “involving the same controlled
11 substance and schedule” and inserting “without re-
12 gard to the type of controlled substance and sched-
13 ule”; and

14 (4) by inserting “Except to the extent a greater
15 minimum sentence is otherwise provided by section
16 401(b) and regardless of any maximum term of im-
17 prisonment, a term of imprisonment under this sub-
18 section in a case involving distribution to a person
19 under 18 years of age by a person 21 or more years
20 of age shall be not less than 10 years. Notwith-
21 standing any other provision of law, the court shall
22 not place on probation or suspend the sentence of
23 any person sentenced under the preceding sentence.”
24 after “not less than 1 year.”.

25 (b) DISTRIBUTION TO PERSONS UNDER 21 YEARS
26 OF AGE; SECOND OR SUBSEQUENT OFFENSE.—Section

1 418(b) of the Controlled Substances Act (21 U.S.C.
2 859(b)) is amended—

3 (1) by inserting “or section 406” after
4 “401(a)(1)”;

5 (2) by inserting “, or attempting or conspiring
6 to do so,” after “twenty-one years of age”;

7 (3) by striking “involving the same controlled
8 substance and schedule” and inserting “without re-
9 gard to the type of controlled substance and sched-
10 ule”;

11 (4) by inserting “or for a felony drug offense”
12 after “May 1, 1971”; and

13 (5) by striking “not less than one year.” and
14 inserting “not less than 10 years. Except to the ex-
15 tent a greater minimum sentence is otherwise pro-
16 vided by section 401(b) and regardless of any max-
17 imum term of imprisonment, a term of imprison-
18 ment under this subsection in a case involving dis-
19 tribution to person under 18 years of age by a per-
20 son 21 or more years of age shall be a mandatory
21 term of life imprisonment. Notwithstanding any
22 other provision of law, the court shall not place on
23 probation or suspend the sentence of any person
24 sentenced under the preceding sentence.”.

1 (c) DISTRIBUTION OR MANUFACTURE NEAR
2 SCHOOLS OR COLLEGES; FIRST OFFENSE.—Section
3 419(a) of the Controlled Substances Act (21 U.S.C.
4 860(a)) is amended—

5 (1) by striking “or section 416” and inserting
6 “, section 406, or section 416”;

7 (2) by inserting “, or attempting or conspiring
8 to do so,” after “manufacturing a controlled sub-
9 stance”;

10 (3) by striking “within 100 feet of”;

11 (4) by inserting “, or public library, or public
12 or private daycare facility” after “video arcade facil-
13 ity”;

14 (5) by inserting “and regardless of any max-
15 imum term of imprisonment” after “Except to the
16 extent a greater minimum sentence is otherwise pro-
17 vided by section 401(b) of this title”; and

18 (6) by striking “not less than one year” and in-
19 serting “not less than 5 years”.

20 (d) DISTRIBUTION OR MANUFACTURE NEAR
21 SCHOOLS OR COLLEGES; SECOND OR SUBSEQUENT OF-
22 FENSE.—Section 419(b) of the Controlled Substances Act
23 (21 U.S.C. 860(b)) is amended—

24 (1) by striking “or section 416” and inserting
25 “, section 406, or section 416”;

1 (2) by inserting “, or attempting or conspiring
2 to do so,” after “manufacturing a controlled sub-
3 stance”;

4 (3) by striking “within 100 feet of”;

5 (4) by inserting “, or public library, or public
6 or private daycare facility” after “video arcade facil-
7 ity”;

8 (5) by inserting “or for a felony drug offense”
9 after “subsection (a) of this section”;

10 (6) by inserting “and regardless of any max-
11 imum term of imprisonment” after “Except to the
12 extent a greater minimum sentence is otherwise pro-
13 vided by section 401(b) of this title”; and

14 (7) by striking “not less than three years” each
15 place it appears and inserting “not less than 10
16 years”.

17 (e) EMPLOYING CHILDREN IN DISTRIBUTION NEAR
18 PROTECTED PLACES.—Section 419(c) of the Controlled
19 Substances Act (21 U.S.C. 860(c)) is amended—

20 (1) by striking “at least 21 years of age” and
21 inserting “at least 18 years of age”;

22 (2) by inserting “Except to the extent a greater
23 minimum sentence is otherwise provided for by sec-
24 tion 401(b) and regardless of any maximum term of
25 imprisonment, a person shall be sentenced under

1 this subsection to a term of imprisonment of not less
 2 than 10 years” after “triple those authorized by sec-
 3 tion 401.”;

4 (3) by striking “(1)” and inserting “(A)” and
 5 in subparagraph (A) as so redesignated, by inserting
 6 “, or attempts or conspires to do so” after “to vio-
 7 late this section”;

8 (4) by striking “(2)” and inserting “(B)” and in
 9 subparagraph (B) as so redesignated, by inserting “,
 10 or attempts or conspires to do so” after “official”;

11 (5) by inserting “(1)” after “(c)”; and

12 (6) by adding at the end the following:

13 “(2) SECOND OR SUBSEQUENT OFFENSES.—Para-
 14 graph (1) shall be applied to an offense after a single prior
 15 conviction under that paragraph or for a felony drug of-
 16 fense has become final by substituting ‘not less than 15
 17 years’ for ‘not less than 10 years’. Penalties for third or
 18 subsequent convictions are governed by section
 19 401(b)(1)(A).”.

20 (f) ATTEMPT AND CONSPIRACY RELATING TO EM-
 21 PLOYMENT OR USE OF PERSONS UNDER 18 YEARS
 22 OLD.—Section 420(a) of the Controlled Substances Act
 23 (21 U.S.C. 861(a)) is amended—

24 (1) in paragraph (1), by inserting “, or attempt
 25 or conspire to do so” after “chapter”;

1 (2) in paragraph (2), by inserting “, or attempt
2 or conspire to do so” after “official”; and

3 (3) in paragraph (3), by inserting “, or attempt
4 or conspire to do so” after “chapter”.

5 (g) EMPLOYMENT OR USE OF PERSONS UNDER 18
6 YEARS OLD; PENALTY FOR FIRST OFFENSE.—Section
7 420(b) of the Controlled Substances Act (21 U.S.C.
8 861(b)) is amended—

9 (1) by inserting “and regardless of any max-
10 imum term of imprisonment” after “provided”; and

11 (2) by striking “not less than one year.” and
12 inserting “not less than 5 years. Except to the ex-
13 tent a greater minimum sentence is otherwise pro-
14 vided by section 401(b) and regardless of any max-
15 imum term of imprisonment, a term of imprison-
16 ment of a person 21 or more years of age convicted
17 under this subsection shall not be less than 10 years.
18 Notwithstanding any other provision of law, the
19 court shall not place on probation or suspend the
20 sentence of any person sentenced under the pre-
21 ceding sentence.”.

22 (h) EMPLOYMENT OR USE OF PERSONS UNDER 18
23 YEARS OLD; SECOND OR SUBSEQUENT OFFENSE.—Sec-
24 tion 420(c) of the Controlled Substances Act (21 U.S.C.
25 861(c)) is amended—

1 (1) by inserting “ or for a felony drug offense”
2 after “prior conviction under subsection (a) of this
3 section”;

4 (2) by inserting “and regardless of any max-
5 imum term of imprisonment” after “provided”; and

6 (3) by striking “not less than one year.” and
7 inserting “not less than 10 years. Except to the ex-
8 tent a greater minimum sentence is otherwise pro-
9 vided by section 401(b) and regardless of any max-
10 imum term of imprisonment, a term of imprison-
11 ment of a person 21 years or more of age convicted
12 under this subsection shall be a mandatory term of
13 life imprisonment. Notwithstanding any other provi-
14 sion of law, the court shall not place on probation
15 or suspend the sentence of any person sentenced
16 under the preceding sentence.”.

17 (i) PROVIDING OR DISTRIBUTING A CONTROLLED
18 SUBSTANCE TO AN UNDERAGE PERSON.—Section 420(d)
19 of the Controlled Substances Act (21 U.S.C. 861(d)) is
20 amended—

21 (1) by striking “fourteen” and inserting “16”;
22 and

23 (2) by striking “subject to a term of imprison-
24 ment for not more than 5 years” and inserting “sen-

1 tenced to a term of imprisonment of not less than
2 5 years or more than life”.

3 (j) MAINTAINING DRUG-INVOLVED PREMISES AF-
4 FECTING CHILDREN.—Section 416 of the Controlled Sub-
5 stances Act (21 U.S.C. 856) is amended—

6 (1) in subsection (a)(1) by inserting “storing,”
7 before “or using”;

8 (2) by inserting “(1)” after “(b)”;

9 (3) by adding at the end of subsection (b) the
10 following:

11 “(2) Any person who violates subsection (a) of this
12 section, knowing that the manufacture, distribution, stor-
13 age, or use of any controlled substance involves or is in-
14 tended to involve a person under the age of 18 or an in-
15 competent person, shall be fined not more than
16 \$2,000,000 (if the offender is an individual) and not more
17 than \$8,000,000 (if the offender is an organization) and
18 imprisoned not less than 5 years or more than life, and
19 if the defendant is the parent or guardian or otherwise
20 responsible for the care or supervision of such person shall
21 be fined as provided in this paragraph and imprisoned not
22 less than ten years or more than life.”.

23 (k) DRUG TRAFFICKING IN THE PRESENCE OF CHIL-
24 DREN.—

1 (1) IN GENERAL.—Part D of the Controlled
2 Substances Act is amended by adding at the end the
3 following:

4 “DRUG TRAFFICKING IN THE PRESENCE OF CHILDREN

5 “SEC. 424. (a) Except to the extent a greater min-
6 imum sentence is otherwise provided by this title, any per-
7 son who violates section 401(a)(1) of this title or section
8 1010(a) of title II in or near the presence of a person
9 under the age of 18 or an incompetent person, or in a
10 location in which such person resides for any period of
11 time, knowing or having reason to know that such person
12 is present or so resides shall be sentenced to a term of
13 imprisonment which may not be less than 5 years or more
14 than life.

15 “(b) Except to the extent a greater minimum sen-
16 tence is otherwise provide by this title, any person who
17 violates section 406 of this title or section 1013 of title
18 II by committing any act in furtherance of the violation
19 in or near the presence of a person under the age of 18
20 or incompetent person, or in a location in which such per-
21 son resides for any period of time, knowing or having rea-
22 son to know that such person is present or so resides shall
23 be sentenced to a term of imprisonment which may not
24 be less than 5 years or more than life.

25 “(c) If at the time of the offense referred to in sub-
26 section (a) or at the time of the commission of the act

1 in furtherance of the violation referred to in subsection
2 (b) the defendant was the parent or guardian or otherwise
3 responsible for the care or supervision of the person under
4 the age of 18 or the incompetent person, shall be sen-
5 tenced to a term of imprisonment which may not be less
6 than 10 years or more than life.

7 “(d) As used in this section, the term ‘in or near the
8 presence of a person’ means within visual sight of such
9 person, within any dwelling, automobile or other vehicle,
10 or boat, in which such person is present, or within 500
11 feet of such person.”.

12 (2) CLERICAL AMENDMENT.—The table of sec-
13 tions for the Comprehensive Drug Abuse Prevention
14 and Control Act of 1970 is amended by inserting
15 after the item relating to section 422 the following
16 new item:

“Sec. 424. Drug trafficking in the presence of children.”.

17 (l) DRUG PARAPHERNALIA INTENDED FOR CHIL-
18 DREN.—Section 422 of the Controlled substances Act (21
19 U.S.C. 863) is amended—

20 (1) so that paragraph (1) of subsection (a)
21 reads as follows:

22 “(1) to sell, offer for sale, facilitate the sale or
23 offer to sell, or provide drug paraphernalia to any
24 person;”.

25 (2) in subsection (b)—

1 (A) by inserting “(1)” after “(b)”; and

2 (B) by adding at the end the following:

3 “(2) Any person who violates subsection (a) by
4 selling, offering for sale, facilitating the sale or offer
5 for sale, or providing drug paraphernalia to any per-
6 son under the age of 18 or to any person knowing
7 that it is intended to be provided to or used by a
8 person under the age of 18 years, or any person who
9 violates subsection (a) by transporting, importing, or
10 exporting drug paraphernalia knowing that it is in-
11 tended to be provided to or used by a person under
12 the age of 18 years, shall be imprisoned for not less
13 than 2 years nor more than 10 years.”.

14 (m) FURTHER PROTECTION FOR CHILDREN.—

15 (1) IN GENERAL.—Part D of the Controlled
16 Substances Act is amended by adding at the end the
17 following:

18 “FAILURE TO PROTECT CHILDREN FROM DRUG
19 TRAFFICKING ACTIVITIES

20 “SEC. 425. (a) It shall be unlawful for any person
21 who witnesses or learns of a violation of sections
22 416(b)(2), 417, 418, 419, 420, 424, or 426 to fail to re-
23 port the offense to law enforcement officials within 24
24 hours of witnessing or learning of the violation and there-
25 after provide full assistance in the investigation, apprehen-

1 sion, and prosecution of the person violating paragraph
2 (a).

3 “(b) Any person who violates subsection (a) of this
4 section shall be sentenced to not less than two years or
5 more than 10 years. If the person who witnesses or learns
6 of the violation is the parent or guardian, or otherwise
7 responsible for the care or supervision of the person under
8 the age of 18 or the incompetent person, such person shall
9 be sentenced to not less than three years or more than
10 20 years.”.

11 (2) CLERICAL AMENDMENT.—The table of sec-
12 tions for the Comprehensive Drug Abuse Prevention
13 and Control Act of 1970 is amended by inserting
14 after the item relating to section 423 the following
15 new item:

“Sec. 425. Failure to protect children from drug trafficking activities.”.

16 (n) SENTENCING GUIDELINES.—

17 (1) Not later than 120 days after the date of
18 the enactment of this Act, the Sentencing Commis-
19 sion shall amend the sentencing guidelines, policy
20 statements, and official commentary issued under
21 section 994 of title 28, United States Code, so as to
22 ensure that—

23 (A) for any person who has been convicted
24 of a felony violation of title II of the Controlled
25 Substances Act, or a felony violation of the

1 Controlled Substances Import and Export Act,
2 if any part of the offense or relevant conduct
3 involved manufacturing, transporting, pos-
4 sessing, storing, using, or trafficking in a con-
5 trolled substance or a chemical or material used
6 or intended to be used in the manufacture of
7 any controlled substance in or near the presence
8 of a person under the age of 18 or an incom-
9 petent person, or in a location in which a per-
10 son under the age of 18 or an incompetent per-
11 son resides for any period of time, or if any of
12 the offense or relevant conduct involved conduct
13 constituting an offense under section 416(b)(2),
14 417, 418, 419, 420, 422, 424, 425, or 426 of
15 the Controlled Substances Act (whether or not
16 charged)—

17 (i) section 5C1.2 of the guidelines
18 shall not apply;

19 (ii) the base offense level is increased
20 by at least 2 levels. Such increase shall be
21 in addition to any applicable increase
22 under section 2D1.1(b)(5)(C) or
23 2D1.10(b)(1)(B); and

24 (iii) if the defendant was the parent
25 or guardian or person otherwise respon-

1 sible for the care or supervision of the per-
2 son under the age of 18 or the incompetent
3 person the base offense level is increased
4 by at least 4 levels. Such increase shall be
5 in addition to any applicable increase
6 under section 2D1.1(b)(5)(C) or
7 2D1.10(b)(1)(B); and

8 (B) the Guidelines Manual is amended in
9 section 2D1.1(b)(5)(C) and section
10 2D1.10(b)(1)(B) to provide for an increase of 8
11 levels when the defendant was the parent or
12 guardian, or otherwise responsible for the care
13 or supervision of the person under the age of
14 18 or the incompetent person.

15 (2) Section 3553(f) of title 18, United States
16 Code, is amended—

17 (A) in paragraph (4), by striking “and” at
18 the end;

19 (B) by redesignating paragraph (5) as
20 paragraph (6);

21 (C) by inserting after paragraph (4) the
22 following new paragraph:

23 “(5) no part of the offense or relevant conduct
24 involved manufacturing, transporting, possessing,
25 storing, using, or trafficking a controlled substance

1 or a chemical or material used or intended to be
 2 used in the manufacture of any controlled substance
 3 in or near the presence of a person under the age
 4 of 18 or incompetent person; or in a location in
 5 which a person under the age of 18 or incompetent
 6 person resides for any period of time; or if any of
 7 the offense or relevant conduct involved conduct con-
 8 stituting an offense under section 416(b)(2), 417,
 9 418, 419, 420, 422, 424, 425, or 426 of the Con-
 10 trolled Substances Act (whether or not charged);
 11 and ”.

12 (3) Section 3553 of title 18, United States
 13 Code, is amended by adding at the end the fol-
 14 lowing:

15 “(g) As used in subsection (f), the term ‘incompetent
 16 person’ means an individual who is incapable of taking
 17 care of the individual’s self or property because of mental
 18 or physical illness or disability, mental retardation, or se-
 19 nility. ”.

20 **SEC. 3. FAIRNESS IN SENTENCING: ASSURING TRAF-**
 21 **FICKERS IN LARGE QUANTITIES OF DRUGS**
 22 **RECEIVE APPROPRIATE SENTENCES AND DE-**
 23 **NYING DOUBLE SENTENCING BENEFITS.**

24 (a) IN GENERAL.—The Guidelines Manual promul-
 25 gated by the Sentencing Commission pursuant to section

1 994(a) of title 28, United States Code, as in effect on No-
 2 vember 1, 2004, is amended—

3 (1) in section 2D1.1(a)(3) by striking “, ex-
 4 cept” and all that follows and inserting a period
 5 after “(c)”;

6 (2) in the Application Notes in the Commentary
 7 to section 3B1.2 by striking Application Note 6 in
 8 its entirety;

9 (3) in section 2D1.1(b) by striking subsection
 10 (7) in its entirety; and

11 (4) in Application Notes in the Commentary to
 12 section 2D1.1 by striking Application Note 21 in its
 13 entirety.

14 (b) LIMITATIONS ON COMMISSION.—On and after the
 15 date of the enactment of this Act no amendment promul-
 16 gated by the Sentencing Commission shall alter or repeal
 17 the effect of the amendments made by this section.

18 **SEC. 4. PROTECTING PERSONS IN DRUG TREATMENT.**

19 (a) IN GENERAL.—Part D of the Controlled Sub-
 20 stances Act is amended by adding at the end the following:

21 “PROTECTION OF PERSONS IN DRUG TREATMENT

22 “SEC. 426. (a) Any person who violates section
 23 401(a)(1), section 406, or section 416 by distributing, pos-
 24 sessing with intent to distribute, or manufacturing a con-
 25 trolled substance in or on, or within 1,000 feet of, the real
 26 property comprising a drug treatment facility, or attempt-

1 ing or conspiring to do so, shall, except to the extent a
2 greater minimum sentence is provided, be imprisoned for
3 not less than 5 years or more than life and if death or
4 serious bodily injury resulted from the use of such sub-
5 stance shall not be less than 10 years. If any person com-
6 mits such a violation after a prior conviction under this
7 subsection or after a prior conviction for any felony drug
8 offense has become final, such person shall be sentenced
9 to not less than 10 years and if death or serious bodily
10 injury resulted from the use of such substance shall be
11 sentenced to life. Penalties for third or subsequent convic-
12 tions shall be governed by section 401(b)(1)(A). The man-
13 datory minimum sentencing provisions of this paragraph
14 shall not apply to first offenses involving 5 grams or less
15 of marijuana.

16 “(b) Whoever intentionally offers, solicits, entices,
17 persuades, encourages, induces, or coerces a person en-
18 rolled in a drug treatment program or facility, or who is
19 under a court order to enroll in, or who has previously
20 been enrolled in, a drug treatment program or facility, to
21 purchase, receive, or possess a controlled substance, or at-
22 tempts or conspires to do so, shall, except to the extent
23 that a greater minimum sentence is provided for, be sen-
24 tenced to a term of imprisonment which may not be less
25 than 5 years or more than life and if death or serious

1 bodily injury resulted from the use of such substance shall
2 not be less than 10 years or more than life. If any person
3 commits such a violation after a prior conviction under
4 this subsection or after a prior conviction for any felony
5 drug offense has become final, such person shall be sen-
6 tenced to not less than 10 years and if death or serious
7 bodily injury resulted from the use of such substance shall
8 be sentenced to life. Penalties for third or subsequent con-
9 victions shall be governed by section 401(b)(1)(A).

10 “(c) As used in this section—

11 “(1) the term ‘drug treatment facility’ in-
12 cludes—

13 “(A) any location at which a practitioner is
14 authorized to dispense narcotic drugs to individ-
15 uals for maintenance treatment or detoxifica-
16 tion treatment under section 303(g) of the Con-
17 trolled Substances Act (21 U.S.C. 823(g));

18 “(B) any location at which an individual or
19 entity (other than a general medical care facil-
20 ity) provides drug abuse diagnosis, treatment or
21 referral for treatment; and

22 “(C) an identified unit within a general
23 medical facility which provides drug abuse diag-
24 nosis, treatment, or referral for treatment; and

1 “(2) the term ‘drug treatment program’ in-
2 cludes—

3 “(A) a practitioner or entity who dispenses
4 narcotic drugs to individuals for maintenance
5 treatment or detoxification treatment under sec-
6 tion 303(g) of the Controlled Substances Act
7 (21 U.S.C. 823(g);

8 “(B) an individual or entity which provides
9 drug abuse diagnosis, treatment or referral for
10 treatment;

11 “(C) medical personnel or other staff in a
12 general medical care facility whose primary
13 function is the provision of drug abuse diag-
14 nosis, treatment or referral for treatment; and

15 “(D) a practitioner or entity who is au-
16 thorized by the Substance Abuse and Mental
17 Health Services Administration to dispense
18 opioid agonist treatment medication to individ-
19 uals for maintenance treatment or detoxifica-
20 tion treatment.”.

21 (b) CLERICAL AMENDMENT.—The table of contents
22 of the Comprehensive Drug Abuse Prevention and Control
23 Act of 1970 is amended by inserting after the item relat-
24 ing to section 419 the following new item:

“419a. Protection of persons in drug treatment.”.

1 **SEC. 5. CONFORMING GUIDELINE SENTENCING TO CON-**
2 **SPIRACY LAW.**

3 Not more than 90 days after the date of the enact-
4 ment of this Act, the Sentencing Commission shall amend
5 the sentencing guidelines, policy statements, and official
6 commentary issued under section 994 of title 28, United
7 States Code, so as to ensure that the relevant conduct
8 under section 1B1.2 of any person who has been convicted
9 of a felony violation of title II of the Controlled Substances
10 Act, or a felony violation of the Controlled Substances Im-
11 port and Export Act, includes the conduct of members of
12 the conspiracy in furtherance of the conspiracy before the
13 defendant joined the conspiracy that was known to the de-
14 fendant before joining the conspiracy, and includes the
15 conduct of members of the conspiracy in furtherance of
16 the conspiracy during the defendant's participation in the
17 conspiracy that was known to the defendant or was rea-
18 sonably foreseeable (whether or not a conspiracy was
19 charged).

20 **SEC. 6. ASSURING LIMITATION ON APPLICABILITY OF**
21 **STATUTORY MINIMUMS TO PERSONS WHO**
22 **HAVE DONE EVERYTHING THEY CAN TO AS-**
23 **SIST THE GOVERNMENT.**

24 Section 3553(f) of title 18, United States Code, as
25 amended by section 2 of this Act, is further amended—

1 (1) by inserting “(1)” before “Notwith-
2 standing” ;

3 (2) by redesignating paragraphs (1) through
4 (6) as subparagraphs (A) through (F);

5 (3) so that subparagraph (F), as so redesign-
6 nated, reads as follows:

7 “(F) the Government certifies that the de-
8 fendant has entered a timely plea of guilty to
9 the most serious readily provable offense and
10 has otherwise done everything possible to assist
11 substantially in the investigation and prosecu-
12 tion of another person as set forth in subsection
13 (e), but was unable to so assist because the de-
14 fendant did not have sufficient information, or
15 had information already known to, or not useful
16 to the Government, but a defendant who pro-
17 vided the Government or the court with false,
18 misleading, or incomplete information, other-
19 wise obstructed the administration of justice, or
20 delayed affirmative efforts to assist substan-
21 tially beyond a time when such efforts could
22 have reasonably been useful to the Government
23 shall not be sentenced under this subsection.”;

24 (4) by striking “court shall impose a sentence
25 pursuant to the guidelines promulgated by the

1 United States Sentencing Commission under section
2 994 of title 28 without regard to any statutory min-
3 imum sentence” and inserting “court shall have the
4 authority to impose a sentence pursuant to sub-
5 section (a), without regard to any statutory min-
6 imum sentence, provided that the sentence includes
7 a term of imprisonment that is not below the bottom
8 of the range described in subsection (a)(4)”; and

9 (5) by inserting at the end the following:

10 “(2) The provisions of paragraph (1) are not
11 severable and if any provision of that paragraph, or
12 the application of such provision to any person or
13 circumstances, is held invalid, the entirety of such
14 paragraph shall to the same extent become utterly
15 invalid and unenforceable and shall not be applied,
16 and the court shall instead impose a sentence not
17 less than that required by any applicable statutory
18 minimum sentence prescribed for such offense.”.

19 **SEC. 7. ASSURING SENTENCING ENHANCEMENT FOR REL-**
20 **EVANT CONDUCT.**

21 Not more than 90 days after the date of the enact-
22 ment of this Act, the Sentencing Commission shall amend
23 the sentencing guidelines, policy statements, and official
24 commentary issued under section 994 of title 28, United
25 States Code so as to ensure—

1 (1) that the commentary to section 2D1.2 in-
2 cludes application of the section to violations of sec-
3 tion 401 or 406 of the Controlled Substances Act
4 (21 U.S.C. 841 or 846);

5 (2) that the enhancements under Guideline sec-
6 tion 2D1.2 and any guideline provision promulgated
7 pursuant to any provision of this Act, are applicable
8 without regard to whether the defendant has been
9 convicted of a statutory violation of drug trafficking
10 in a protected location or involving an underage or
11 pregnant individual (including an attempt or con-
12 spiracy to commit such a violation) and without re-
13 gard to whether the defendant stipulated to such a
14 statutory violation of such an offense;

15 (3) that conduct constituting an offense under
16 section 416(b)(2), 417, 418, 419, 420, 422, 424,
17 425, or 426 of the Controlled Substances Act (with-
18 out regard to conviction) shall be treated as relevant
19 conduct under section 1B1.3 for persons convicted
20 under section 401 or 406 of that Act (21 U.S.C.
21 841 or 846); and

22 (4) that section 2D1.2(a)(1) provides for a 4
23 rather than a 2 level increase; that section
24 2D1.2(a)(2) provides for a 2, rather than 1, level in-
25 crease; that section 2D1.2(a)(3) provides for a level

1 28, rather than level 26; and that section
2 2D1.2(a)(4) provides for a level 18, rather than level
3 13.

4 **SEC. 8. ASSURING PROGRESSIVE ENHANCEMENTS FOR**
5 **PERSONS POSSESSING OR USING FIREARMS.**

6 Not more than 90 days after the date of the enact-
7 ment of this Act, the Sentencing Commission shall amend
8 the sentencing guidelines, policy statements, and official
9 commentary issued under section 994 of title 28, United
10 States Code, so as to ensure—

11 (1) that the specific offender characteristics
12 under section 2D1.1(b) provide for increases to the
13 base offense level of—

14 (A) 8 levels if a firearm was possessed in
15 or near the presence of a person under the age
16 of 18, or in a location in which a person under
17 the age of 18 resides for any period of time;

18 (B) 6 levels if the defendant discharged a
19 firearm or 8 or more firearms were possessed or
20 a firearm described in section 921(a)(23) of
21 title 18, United States Code, was possessed, or
22 a firearm equipped with a device described in
23 section 921(a)(24) of title 18, United States
24 Code, was possessed, or a device described in

1 section 921(a)(4) of title 18, United States
2 Code, was possessed;

3 (C) 4 levels if the defendant brandished or
4 otherwise used a dangerous weapon (including a
5 firearm) or possessed a firearm described in
6 section 921(a), (6), (8), or (30) of title 18
7 United States Code, or section 5845(a) of title
8 26, United States Code or 6 or more firearms
9 were possessed;

10 (D) 3 levels if 2 or more firearms were
11 possessed; and

12 (E) 2 levels if a dangerous weapon (includ-
13 ing a firearm) was possessed;

14 (2) that the specific offender characteristics
15 under section 2D1.1 provide for an increase to the
16 base offense level of—

17 (A) 6 levels if the offense involved perma-
18 nent or life-threatening bodily injury;

19 (B) 4 levels if the offense involved serious
20 bodily injury; and

21 (C) 2 levels if the offense involved bodily
22 injury;

23 (3) that the cumulative adjustments under
24 paragraphs (1) and (2) shall not shall not exceed 10
25 levels; and

1 (4) that the specific characteristics under sec-
2 tion 2D1.1 provide for an increase to the base of-
3 fense level of 2 levels if the defendant committed any
4 part of the instant offense after sustaining a felony
5 conviction for a controlled substance offense.

6 **SEC. 9. MANDATORY DETENTION OF PERSONS CONVICTED**
7 **OF SERIOUS DRUG TRAFFICKING OFFENSES**
8 **AND CRIMES OF VIOLENCE.**

9 Section 3145(c) of title 18 United States Code, is
10 amended—

11 (1) by inserting “prior to sentencing” after
12 “may be ordered released”; and

13 (2) by striking “the judicial officer, if it is
14 clearly shown that there are exceptional reasons why
15 such person’s detention would not be appropriate.”
16 and inserting “the judicial officer if, the Government
17 certifies that the defendant is engaged in ongoing
18 active cooperation with the Government in con-
19 templation of the defendant providing substantial as-
20 sistance to the Government in the investigation and
21 prosecution of another person pursuant to section
22 3553(e) of this title, section 994(n) of title 28, or
23 United States Sentencing Guidelines section 5K1.1,
24 and that defendant’s release on appropriate condi-
25 tions pending sentencing is essential to permit such

1 assistance. The judicial officer shall order the de-
2 fendant detained immediately upon cessation of ac-
3 tive cooperation, or upon being sentenced, whichever
4 first occurs. Availability to be interviewed or to tes-
5 tify before a grand jury or a judicial proceeding is
6 not grounds for release.”.

7 **SEC. 10. PROTECTING HUMAN LIFE AND ASSURING CHILD**
8 **SAFETY.**

9 (a) IN GENERAL.—Section 417 of the Controlled
10 Substances Act (21 U.S.C. 858) is amended—

11 (1) by inserting “(a)” before “Whoever”;

12 (2) by inserting “possessing, storing, or” before
13 “transporting”;

14 (3) by inserting “or intended to be used in the
15 manufacture of a controlled substance,” before “cre-
16 ates”;

17 (4) by striking “not more than 10 years” and
18 inserting “not less than 3 years nor more than life”;
19 and

20 (5) by inserting at the end the following:

21 “(b)(1) Whoever violates subsection (a) by creating
22 a substantial risk of harm to a person under the age of
23 18 or incompetent person, shall be fined in accordance
24 with title 18, United States Code, or imprisoned not less
25 than 5 years, nor more than life, or both.

1 “(2) As used in this section, the term ‘incompetent
2 person’ means an individual who is incapable of taking
3 care of the individual’s self or property because of mental
4 or physical illness or disability, mental retardation, or se-
5 nility. ”.

6 (b) SENTENCING GUIDELINES.—Not more than 90
7 days after the date of the enactment of this Act, the Sen-
8 tencing Commission shall amend the sentencing guide-
9 lines, policy statements, and official commentary issued
10 under section 994 of title 28, United States Code, so as
11 to ensure that section 2D1.1(b)(6)(B) and (C) apply if
12 the offense involved the manufacture of any controlled
13 substance.

14 **SEC. 11. LIFE IMPRISONMENT WITHOUT RELEASE FOR**
15 **DRUG FELONS AND VIOLENT CRIMINALS**
16 **CONVICTED A THIRD TIME.**

17 Section 401(b) of the Controlled Substances Act (21
18 U.S.C. 841(b)) is amended—

- 19 (1) by striking “or 420”;
- 20 (2) by inserting “420, 424, 425, or 426” after
21 “419,”; and
- 22 (3) by striking “If any person commits a viola-
23 tion of this subparagraph or of section 418, 419, or
24 420 after two or more prior convictions for a felony
25 drug offense have become final, such person shall be

1 sentenced to a mandatory term of life imprisonment
2 without release and fined in accordance with the
3 preceding sentence.” and inserting “If any person
4 commits a violation of this subparagraph or of sec-
5 tion 409, 416, 417, 418, 419, 420, 422, 424, 425,
6 or 426 or a crime of violence after 2 or more prior
7 convictions for a felony drug offense or crime of vio-
8 lence or for any combination thereof have become
9 final, such person shall be sentenced to not less than
10 a mandatory term of life imprisonment without re-
11 lease and fined in accordance with the preceding
12 sentence. For purposes of this subparagraph, the
13 term ‘crime of violence’ means an offense that is a
14 felony punishable by a maximum term of imprison-
15 ment of 10 years or more and has as an element the
16 use, attempted use, or threatened use of physical
17 force against the person or property of another, or
18 by its nature involves a substantial risk that physical
19 force against the person or property of another may
20 be used in the course of committing the offense.”.

21 **SEC. 12. SENTENCING PROTECTIONS.**

22 (a) **GENERALLY.**—Section 3553 of title 18 United
23 States Code, is amended—

1 (1) in subsection (a)(1) by inserting “, except
2 as otherwise provided in subsection (g),” before “the
3 history”;

4 (2) in subsection (a)(2)—

5 (A) by inserting “and” at the end of sub-
6 paragraph (B);

7 (B) by striking “and” at the end of sub-
8 paragraph (C); and

9 (C) by striking subparagraph (D);

10 (3) by adding at the end the following:

11 “(g) LIMITATIONS ON CONSIDERATION OF FAC-
12 TORS.—(1) In imposing a sentence, the court shall not
13 consider a defendant’s race, sex, national origin, creed, re-
14 ligion, or socioeconomic status.

15 “(2) The court may consider the following factors
16 only as may be required in calculating the range referred
17 to in subsection (a)(4) or with respect to the imposition
18 of a sentence at or above the bottom of that range, and
19 shall not otherwise consider them in imposing a sentence:

20 “Defendant’s criminal history.

21 “The absence of a criminal record.

22 “Family ties and responsibilities.

23 “Vocational skills.

24 “Mental and emotional condition.

1 “Drug or alcohol dependence or
2 abuse.

3 “Employment record.

4 “Charitable contributions or civic,
5 military, or public service, or good works.

6 “Employment-related contributions.

7 “Record of prior good works.

8 “The need to provide the defendant
9 with educational or vocational training,
10 medical care, or other correctional treat-
11 ment in the most effective manner.

12 “Role in the offense.

13 “A sentence or likely sentence which a
14 defendant would receive if convicted of the
15 same or similar offense under the law of
16 any State.

17 “Reports or recommendations of the
18 Sentencing Commission to Congress.

19 “Post-offense or post-sentencing reha-
20 bilitation.

21 “Acceptance of responsibility.

22 “Extreme remorse.

23 “Voluntary cessation of criminal con-
24 duct before discovery.

1 “Effect of defendant’s incarceration
2 on others.

3 “Collateral consequences of defend-
4 ant’s arrest, conviction, or incarceration,
5 including criminal or civil forfeiture, judg-
6 ment in a civil action, loss of a professional
7 or business license, loss of public office, de-
8 portation upon release, or agreement to be
9 deported.

10 “Aberrant behavior.

11 “Having made restitution.

12 “Ability to make restitution or facili-
13 tation of ability to make restitution.

14 “Likelihood of recidivism.

15 “Compliance with conditions of pre-
16 trial or presentencing release.

17 “Age, other than in the case of a de-
18 fendant who is elderly and infirm.

19 “That the defendant plead guilty or
20 entered into a plea agreement.

21 “Lack of guidance as a youth.

22 “Disadvantaged or abusive upbringing.
23 ing.

24 “Gambling addiction.

1 “The absence of an aggravating factor
2 including those set forth in the sentencing
3 guidelines and policy statements issued
4 under section 994(a) of title 28, United
5 States Code.

6 “Personal or business financial dif-
7 ficulties and economic pressures.

8 “The court’s personal opinion con-
9 cerning the guidelines or the guideline
10 range.

11 “Delay in prosecution.

12 “That the defendant entered a plea
13 agreement believing that his ultimate sen-
14 tence would be lower than that required by
15 the guidelines or by statute.

16 “Any other factor as determined by
17 the sentencing commission and identified
18 in the sentencing guidelines and policy
19 statements issued under section 994(a) of
20 title 28, United States Code.

21 “(3) Unless the Government makes a motion, asking
22 for a sentence below the range referred to in subsection
23 (a)(4), and stating that the defendant has provided sub-
24 stantial assistance in the investigation or prosecution of
25 another person who has committed an offense, the court

1 shall not, based on a consideration of the defendant’s co-
2 operation with or assistance to the Government or on the
3 extent of that cooperation and assistance, impose a sen-
4 tence below the range referred to in subsection (a)(4). If
5 the Government makes such a motion, the court may,
6 based on a consideration of the facts relating to that as-
7 sistance, impose a sentence below the range referred to
8 in subsection (a)(4).

9 “(h)(1) Other than a sentence imposed as a result
10 of a motion of the Government stating that the defendant
11 has provided substantial assistance in the investigation or
12 prosecution of another person who has committed an of-
13 fense or as a result of, and pursuant to, an early disposi-
14 tion program established by the Attorney General pursu-
15 ant to section 401(m)(2)(B) of the PROTECT Act (Public
16 Law 108–21), the court may impose a sentence below the
17 range referred to in subsection (a)(4) only after—

18 “(A) providing the parties with 20 days written
19 notice of its intention to impose a particular sen-
20 tence below the range referred to in subsection
21 (a)(4) and setting forth the particular proposed sen-
22 tence, the specific factors which support such a sen-
23 tence, how such a sentence is reasonable and how
24 such a sentence avoids unwarranted sentence dis-
25 parities among Federal defendants with similar

1 records who have been found guilty of similar con-
2 duct; and

3 “(B) permitting the parties to submit briefs in
4 support or opposition to such intended sentence and
5 conducting a full evidentiary hearing to consider
6 both the reasonableness of the particular intended
7 sentence and the unwarranted disparity resulting
8 from the particular sentence.

9 “(2) Information, including sentencing information
10 from the Sentencing Commission, with respect to within-
11 the-range sentencing numbers and cases for similarly situ-
12 ated defendants shall be fully admissible. Information re-
13 garding a sentence or likely sentence which a defendant
14 would receive if convicted of the same or similar offense
15 under the law of any State, sentences imposed on other
16 defendants as result of a motion of the government asking
17 for a sentence below the range referred to in subsection
18 (a)(4) and stating that the defendant has provided sub-
19 stantial assistance in the investigation or prosecution of
20 another person who has committed an offense, or as a re-
21 sult of, and pursuant to, an early disposition program es-
22 tablished by the Attorney General pursuant to section
23 401(m)(2)(B) of the PROTECT Act (Public Law 108–
24 21) shall not be admissible and shall not form a basis to

1 support a sentence below the range referred to in sub-
2 section (a)(4).

3 “(3) Factors supporting a sentence below the range
4 referred to in subsection (a)(4) shall be supported and
5 shown by clear and convincing evidence.”; and

6 (4) in subsection (c)—

7 (A) in paragraph (2)—

8 (i) by striking “which reasons must
9 also” and inserting “, and if the sentence
10 is below the range described in subsection
11 (a) (4), other than as a result of a motion
12 by the government asking for a sentence
13 below the range and stating that the de-
14 fendant has provided substantial assistance
15 in the investigation or prosecution of an-
16 other person who has committed an of-
17 fense, or as a result of, and pursuant to,
18 an early disposition program established by
19 the Attorney General pursuant to section
20 401(m)(2)(B) of the PROTECT Act (Pub-
21 lic Law 108–21) the court shall also pro-
22 vide a justification of the reasonableness of
23 the sentence, and a detailed explanation as
24 to how the sentence avoids unwarranted
25 sentencing disparities among Federal de-

1 fendants with similar records who have
2 been found guilty of similar conduct, each
3 of which must be supported and shown by
4 clear and convincing evidence and”; and

5 (ii) by striking “except to the extent”
6 and all that follows through “such state-
7 ments”; and

8 (B) by striking the comma which imme-
9 diately follows another comma.

10 (b) ASSURING JUDICIAL ADMINISTRATIVE RESPON-
11 SIBILITIES ARE PERFORMED BY THE JUDICIAL
12 BRANCH.—Section 994(w)(1) of title 28, United States
13 Code, is amended—

14 (1) by inserting “(other than a case involving a
15 sentence imposed for a petty offense, as defined in
16 section 19 of title 18, for which there is no applica-
17 ble sentencing guideline)” after “every criminal
18 case”; and

19 (2) by adding at the end the following: “The
20 duties and responsibilities set forth herein, or any
21 portion thereof, shall not be delegated to the execu-
22 tive branch.”.

23 (c) CONFORMING AMENDMENTS.—(1) Section 3661
24 of title 18, United States Code, is amended by striking

1 “No” and inserting “Except as provided in section
2 3553(g) or (h), no”.

3 (2) Section 410 of the Controlled Substances Act (21
4 U.S.C. 850), is amended by striking “section 303(a) of
5 the Public Health Service Act” and by inserting “in sec-
6 tion 3553(g) of title 18, United States Code”.

○